

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of William Bernier

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above matter came before Administrative Law Judge Manuel J. Cervantes (ALJ) on William Bernier's (Movant) Notice of Motion and Motion to Vacate Judgment, filed April 26, 2011.<sup>1</sup>

Michael J. Tostengard, Assistant Attorney General, filed a response on behalf on the Department of Commerce (Department) on May 11, 2011.

**STATEMENT OF THE ISSUE**

Does the undersigned ALJ have jurisdiction to grant the Movant the relief requested?

The ALJ concludes that the undersigned judge lost jurisdiction to grant any relief when he issued his report to the Commissioner of Commerce on December 9, 2009.<sup>2</sup>

**FINDINGS OF FACT**

1. The Movant was served with a Notice of and Order for Hearing, Order for Prehearing Conference, and Order to Show Cause on July 30, 2009, alleging fraudulent, and other unlawful conduct, relative to his Minnesota real estate salesperson's license.

2. On September 22, 2009, Movant, and his counsel Michael C. Black, appeared at the scheduled prehearing conference. As a result of the prehearing conference and pursuant to agreement of the parties, the ALJ set December 4, 2009 for a hearing on the merits.<sup>3</sup>

3. On November 3, 2009, Mr. Black withdrew from representation.<sup>4</sup>

4. On December 4, 2009, the Department, and its counsel, appeared and were prepared to go forward with the hearing. The Movant did not appear.

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<sup>1</sup> Motion brought pursuant to Minn. R. 1400.8300 and Minn. R. of Civ. Pro. 60.02.

<sup>2</sup> Minn. R. 1400.8300

<sup>3</sup> Scheduling Order, September 30, 2009.

<sup>4</sup> Findings of Fact, Conclusions, and Recommendation (FOF), December 16, 2009, at Fn. 1.

5. The Movant did not communicate with the ALJ or the Department to request a continuance or other relief. The Movant failed to appear without justification or prior approval.

6. In light of the Movant's default, the Department moved for a default judgment. The facts alleged in the underlying pleadings were taken as true and were deemed proven without any further evidence.<sup>5</sup> The ALJ concluded that the facts, as alleged, reasonably supported discipline against the Movant's real estate salesperson's license.

7. The ALJ granted the Department's motion on December 16, 2009 and made issued his report. The ALJ's recommendation to the Commissioner was not a final decision.<sup>6</sup>

8. On April 23, 2010, the Commissioner of Commerce adopted the ALJ's recommendation *en toto* and ordered the revocation of Movant's real estate salesperson's license. In addition, the Commissioner ordered the Movant to pay \$20,000 as a civil penalty.<sup>7</sup> No exceptions to the Commissioner's Order were filed.

9. The Commissioner's Order was a final decision.

### **CONCLUSIONS OF LAW**

1. Minn. R. 1400.8300, in relevant part, states:

Once a judge has issued a report, unless that report is binding on the agency, the judge loses jurisdiction to amend the report except for clerical or mathematical errors. Unless the report is a final order, binding on the agency, petitions for reconsideration or rehearing must be filed with the agency.

2. The ALJ's report of December 16, 2009 was not binding on the Department of Commerce, hence, the ALJ lost jurisdiction to amend the report.

**IT IS HEREBY ORDERED** that the Movant's request for relief be DENIED and that this matter be DISMISSED.

Dated: May 18, 2011

s/Manuel J. Cervantes  
MANUEL J. CERVANTES  
Administrative Law Judge

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<sup>5</sup> Minn. R. 1400.6000.

<sup>6</sup> See, FOF.

<sup>7</sup> Findings of Fact, Conclusions of Law, and Order (Cmmr.'s Order), April 23, 2010.